

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.4108 OF 2021

Shafik Sattar Shah, Age 30 years,
Occ.Labour/Driver, R/o Behind Gausiya Masjid,
Wadalagaon, Nashik.

Applicant

versus

The State of Maharashtra

Respondent

Mr.Pritam P. Runwal, Advocate for applicant.
Mr.N.B.Patil, APP, for State.

CORAM : PRAKASH D. NAIK, J.

Date of Reserving the Order : 6th October 2022

Date of Pronouncing the Order : 19th December 2022

PC :

1. The applicant is arrested on 18th June 2020 in connection with C.R No.I-239 of 2020 registered with Mumbai Naka Police Station, Nashik for offences under Sections 8(C), 20(C) and 29 of Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS Act').

2. The case of prosecution is as follows :-

On 17th June 2021 information was received that two persons aged around 30 to 35 years are likely to come in vehicle bearing No.MH-02-CD-1544 carrying 40 to 50 kgs of Ganja for the purpose of sale on 18th June 2020. The information was recorded. The information was forwarded to Assistant Commissioner of Police vide written letter and directions were issued for conducting raid. Panchas were arranged. The raiding party proceeded to the spot.

The vehicle bearing NoMH-02-CD-1544 was intercepted. Two persons were found in the vehicle. They gave their names as Shafik Sattar Shah and Gayasoddin Niyajoddin Shaikh. They were apprised of their rights u/s.15 of NDPS Act. Written letter was issued to them in that regard. Search was conducted. During search of vehicle white plastic bag was found. On opening the bag it was noticed that there was about 14 packets in the bag. They were opened. The inmates of the vehicles informed that it was Ganja. The total weight of the contraband was 40.500 kgs. The value of the contraband was around Rs.11,32,400/-. The contraband was kept in a bag. Samples were taken. On completing investigation charge sheet was filed.

3. The applicant preferred application for bail before Sessions Court, at Nashik. The first application was rejected by order dated 4th November 2020 and subsequent application was rejected vide order dated 22nd September 2021.

4. Learned advocate for applicant submitted that applicant is in custody for last two years. He had no knowledge about contraband in the dickey of car. He was driver. Section 42(2) of NDPS Act is not complied. The prosecution case is that contraband was found in different packets. The packets were opened and contraband was mixed. Samples were obtained thereafter. It was necessary for the investigating agency to take samples from each packet. The standing order in that regard was not complied. Procedure for taking samples was not followed. Samples were drawn on the spot. Mixing of contraband from each packet is not permissible. The contraband was containing tops. The weight could have decreed. The material was not seized. There is no record where it is kept.

There are no criminal antecedents against applicant.

5. Reliance is placed on following decisions :

(a) Gurmeet Singh Vs. Davinder Singh and another
2021-ALL MR (Cri)-4405;

(b) Order passed by Allahabad High Court in the case of Om Prakash Verma Vs. State of U.P in Misc.Bail Application No.9660/2021, dated 11th March 2022;

(c) Order passed by Delhi High Court in Bail Application No.1965 of 2020, Ranjeet Sahu Vs. State, dated 4th September 2020;

(d) Order of Delhi High Court in Criminal Appeal No.1027/2015 and Cri.M.B.511/2019 Amani Fidel Chris Vs. NCB, dated 13th March 2020.

6. Learned APP submitted that the grounds urged by applicant cannot be considered at this stage. The offence is of serious nature. Section 37 of NDPS Act is required to be followed. Prima facie case is made out against applicant. The applicant and the co-accused were occupying the vehicle. Huge Ganja was found. The procedure was complied. Information was forwarded to higher authority. Assuming that Ganja was found in the packets was mixed, bail cannot be granted on that ground. The issue will have to be dealt with in the trial.

7. Specific information was received that two persons are likely to come in a vehicle with Gnaja for the purpose of sale. Information was recorded. It was forwarded to higher authority. Permission was

obtained and raid was conducted. The accused came in vehicle. Search of vehicle resulted in finding of bag containing 14 packets. On opening the packets it was found that it was containing green colour leaves and tops with strong smell. The samples were taken. Chemical analyser report supports prosecution case. The description in the C.A report indicates that contraband was flowering/fruited tops with greenish coloured leaves, seeds and stalks put in a packet. The sample was Ganja and it falls under Section 2(iii)(b) of NDPS Act. The applicant cannot claim that he had no knowledge that contraband was in the vehicle. The total weight of the contraband is 40.500 kgs. The value of contraband is Rs.11,32,400/-. The prosecution has claimed that Section 42(2) has been complied. Learned counsel for applicant had urged that mixing was not permissible and that sample ought to have been taken from each packet. It is pertinent to note that all the packets were kept in one bag. On opening it was found that it was found with flowers, fruited tops, leaves, seeds, stalks having strong smell. Prejudice, if any, to the accused would be considered at the time of trial. The grounds urged by applicant cannot be considered at this stage. It would be his defense. It would be agitated at the time of trial. The decisions relied upon by advocate for applicant have delivered in the facts of those cases. In the case of Karnail Singh Vs. State of Haryana (2009)8-SCC-539, it was observed that whether there is adequate or substantial compliance with Section 42 or not is a question of fact to be decided in each case. On the receipt of information it was recorded. It was forwarded to the higher authority Hence, at this stage, it cannot be said that Section 42(2) is not complied by investigating agency.

8. Hence, the application is devoid of merits and deserves to be rejected

ORDER

(i) Bail Application is rejected and stands disposed off.

(PRAKASH D. NAIK, J.)

MST